



DONALD J. PFUNDSTEIN
President & Managing
Director

214 N. Main Street
P.O. Box 1415
Concord, NH 03301

Ph: (603) 545-3600
Ph: (800) 528-1181
Fax: (603) 228-6204
pfundstein@gcglaw.com

December 15, 2008

Thomas S. Burack, Chairman
New Hampshire Site Evaluation Committee
29 Hazen Drive
P.O. Box 95
Concord, NH 03302-0095

**Re: Docket No. SEC 2008-02 - Application of Tennessee Gas Pipeline Company
For a Certificate of Site and Facility Concord Lateral Expansion Project**

Dear Chairman Burack:

Enclosed for filing in the above-referenced docket is Tennessee Gas Pipeline Company's Response to Counsel for The Public's Memorandum of Law.

If you have any questions, please have your staff call me.

Sincerely yours,



Donald J. Pfundstein

DJP/jlb

Enclosure

cc: Service List

THE STATE OF NEW HAMPSHIRE
ENERGY FACILITY SITING EVALUATION COMMITTEE

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)
In Re: Application of Tennessee)
Gas Pipeline Company For a)
Certificate of Site and Facility -) Docket No. SEC 2008-02
Concord Lateral Expansion Project)
)

Tennessee Gas Pipeline Company's Response to Counsel For
The Public's Memorandum Of Law

Tennessee Gas Pipeline Company ("Tennessee") obtained authorization from the Federal Energy Regulatory Commission ("FERC") pursuant to Section 7(c) of the Natural Gas Act, 15 USC §717f(c) under a certificate of public convenience and necessity to construct and operate a new 6,130 horsepower compressor station on its Line 200 system, the Concord Lateral system in Pelham, New Hampshire. See Order dated August 28, 2008 at Tennessee's Exhibit I (the "Order"). Without waiving any rights under federal law, Tennessee also filed an Application for a Certificate of Site and Facility on April 22, 2008. Public Counsel seeks to condition the issuance of any Certificate of Site and Facility granted to Tennessee, in pertinent part, to limit the noise attributable to the operation of the facility to 50 DB(A) Ldn at any nearby noise sensitive area ("NSA"). See PC Memorandum of Law, Sec. I.

Public Counsel's proposed conditions described at Section I of its Memorandum of Law (the "Proposed Conditions") are without meaningful foundation in state law, local ordinance or environmental science. Public Counsel appears to have taken Tennessee's predicted sound level contributions at the nearest NSA's ranging from 46 to 48 dB(A) Ldn (See Tennessee's Exhibit

H), and “suggest[ed] 50, to build in a little bit of room for error.” Transcript p 23. This statement demonstrates that the Proposed Conditions do not represent the application of, or even a thoughtful variation on, a previously enacted law, ordinance, or scientific research. Rather, the Proposed Conditions are seemingly an impromptu response to this project’s circumstances, with a little wiggle room built in for good measure. In contrast to Public Counsel’s choice, the federal 55 dB(A) Ldn limit under Part 380 – Regulations Implementing the National Environmental Policy Act, was developed based on in-depth studies and has been used as the basis for environmental sound guidelines for decades. See, e.g., Public Counsel’s Exhibit 19.

Instead of having as their basis recognized law or local ordinance grounded in sound public policy, the Proposed Conditions are an arbitrary response to a federally licensed project that will not have any meaningful impact on the project’s construction or operation. The fact is that the Proposed Conditions are unlikely to have any impact on the neighbors that the Proposed Conditions are ostensibly designed to protect. The high performance acoustical compressor building that Tennessee has committed to design and construct as described in Section 4 of the HFP Report (Tennessee’s Exhibit H) has predicted sound level contributions at the nearest sound sensitive areas ranging from 46 to 48 dB(A) Ldn, below the limit of 50 dB(A) Ldn under the Proposed Conditions.

Much of Public Counsel’s arguments for the Proposed Condition amounts to the sentiment that if the compressor station won’t operate above 50 dB(A) Ldn, what’s the harm in agreeing to the Proposed Conditions? The harm is significant, as described in detail in Tennessee’s Post-Hearing Memorandum. This “no harm, no foul” argument should not serve as the basis for conditions that would have a significant impact on this project and the state’s broader energy policy.

The Proposed Conditions are not some well reasoned effort to fill a gap in the federal regulatory scheme. Instead, the Proposed Conditions directly conflict with FERC regulations establishing a maximum limit of 55 dB(A) Ldn for sound from compressor stations at any pre-existing NSA. 18 CFR § 380.1 (2008). If there were no overlap between the Proposed Conditions and federal law, perhaps there would be a policy argument for imposition of state regulation to fill the gap. See, e.g., Kern River Gas Transmission Co., 757 F. Supp. 1110, 1115 (D. Nev. 1990) (explaining that some regulations that do not target concerns already exhaustively reached by the Natural Gas Act may properly be the subject of County and City action). But that is not the case here. There is obvious overlap and conflict between the Proposed Conditions and FERC's regulations. Therefore, the federal standard of 55 dB(A) Ldn preempts the Proposed Conditions' lower limit of 50 dB(A) Ldn.

Preemption is not preconditioned on certainty of delay or prohibition of a particular project as Public Counsel asserts. See PC Memorandum of Law p. 10. The policy of preemption in the context of the construction of interstate natural gas facilities is designed to ensure a uniform system of regulation to ensure an adequate supply of natural gas. Attempts to regulate in areas addressed under federal law, as with the Proposed Conditions, would undermine that important interest in maintaining a uniform system. Consequently, the courts have held that, "because the federal regulatory scheme comprehensively regulates the location, construction and modification of natural gas facilities, there is no room for local zoning or building code regulations on the same subjects. In short, Congress clearly has manifested its intent to occupy the field and has preempted local zoning ordinances and building codes to the extent that they purport to regulate matters addressed by federal law." Algonquin LNG v. Ramzi

J. Loqa, 79 F. Supp. 2d 49, 52 (D.RI 2000). The Proposed Conditions do not, as Public Counsel has suggested, have to cause delay or prohibition to be preempted.

While delay is not a precondition to preemption, the fact is that the Proposed Conditions could contribute to delay. Mr. Stokdyk testified that imposition of the Proposed Conditions could cause appellate proceedings to delay this Project or even abandon it. Transcript, p. 40. Therefore, Tennessee objects to Public Counsel's characterization that the evidence provided by Tennessee is undisputed that "there is nothing about the 50 dB limit that will make compliance with the Applicant's FERC orders impossible or unreasonably difficult." See PC's Memorandum of Law, p. 10.

Public Counsel purports to further invalidate the federal 55 dB(A) Ldn limit to effectively lower the sound limit to 48 dB(A) Ldn, through Condition A of the Proposed Conditions. Condition A would require Tennessee to include "such additional acoustical lagging and walls or barriers that may be necessary to achieve 46-48 dB(A) Ldn." See PC's Memorandum of Law, Sec. I. The condition blends language from the Order and various exhibits to create the misleading impression that this additional requirement is consistent with Tennessee's own specifications discussed in Mr. Jones' letters that appear at PC Exhibits 5 and 6. To be clear, Tennessee never committed to that additional requirement, nor are the levels discussed in Mr. Jones' report at PC Exhibit 5 the relevant standard for limiting sound levels under the Order. Tennessee's commitment is to design and construct the compressor station in substantial conformity with Section 4 of the Report of HFP Acoustical Consultants, Inc., dated November 6, 2008 and in compliance with applicable FERC sound level regulations. See Tennessee's Exhibit J.

Public Counsel further confuses the meaning of the Order in the “Factual Background” section of the Memorandum of Law wherein Public Counsel states that “FERC indicated that the construction and mitigation measures were necessary to ‘ensure that the public is adequately protected from station noise’”. PC Memorandum, p. 5, quoting the Order, p. 7-8. Public Counsel’s Memorandum does not explain that the Order was informed by a “Baseline Sound Survey and Noise Impact Assessment” dated Dec. 20, 2007 (the only sound report considered by FERC) that predicted sound levels as high as 54.7 dB(A) Ldn (See Tennessee’s Exhibit A, Appendix M), not the 46 to 48 Ldn range that the most recent reports predict. If FERC had understood that predicted sound levels would in fact be in the lower 46 to 48 dB(A) Ldn range, which Public Counsel’s own Exhibit 18 characterize as being in the “quiet” to “very quiet” range, it is reasonable to expect that FERC may have described the measures differently and of less importance, thereby undermining Public Counsel’s argument for the necessity of the Proposed Conditions.

Without commenting on each point in Public Counsel’s Memorandum, there are two misleading points that Tennessee desires to address. Section III on page 8 of the Memorandum comments that noise from unsilenced blowdown events can be upwards of 100 dB(A) Leq at 50 feet. However, this comment is irrelevant to the discussion because the compressor station has been designed with a blowdown silencer, as discussed in Mr. Jones’ testimony. See Transcript p.44. Also, the Memorandum at Section 2, page 4 states that FERC staff noted that the facility would cause a large increase in ambient noise up to almost a mile from the facility. However, this statement by FERC was based on inaccurate data that was corrected by Tennessee during the course of the FERC proceeding that culminated in the Order.

The Proposed Conditions represent a concerning response, unrooted in state or local law or environmental science, to circumstances that do not warrant further regulation, given that the compressor station is already predicted to operate below the 50 dBA Ldn. Our national and local energy policy law should not be subject to a so-called "no harm no foul" approach to regulation. It's quite reasonable to foresee unnecessary delay and possible cancellation of future projects if regulators follow the precedent established here and seek to impose sub-55 dB(A) Ldn limits where compliance would be impossible. Without a uniform system applying only the federal 55 dB(A) Ldn limit, the important national policy of ensuring safe and reliable delivery of natural gas would be jeopardized. Therefore, Tennessee respectfully requests that the Committee accept Tennessee's proposed noise condition, Exhibit J, and reject Public Counsel's Proposed Conditions.

Respectfully submitted,

TENNESSEE GAS PIPELINE COMPANY
By Its Counsel
GALLAGHER, CALLAHAN & GARTRELL, PC

Dated: 12/15/08

By: 

Donald J. Pfundstein, Esq.
P. O. Box 1415
Concord, New Hampshire 03301
(603) 545-3600

Dated: 12/15/08

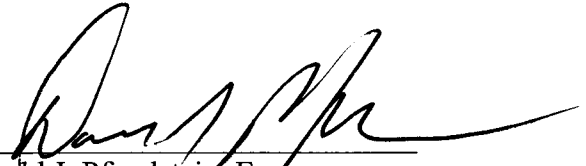
By: 

Erik R. Newman, Esq.
P. O. Box 1415
Concord, New Hampshire 03301
(603) 545-3638

CERTIFICATE OF SERVICE

I hereby certify that a copy of Tennessee Gas Pipeline Company's Post-Hearing Memorandum was mailed on this date via first class U.S. mail to the service list.

Dated: 12/15/08



Donald J. Pfundstein, Esq.